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PTO/SB/21 (05-03) Approved for use through 04/30/2003. OMB 0651-0031 U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. **Application Number** 10/706.412 TRANSMITTAL Filing Date November 12. 2003 **FORM** First Named Inventor Christian C. Petersen Art Unit 2837 (to be used for all correspondence after initial filing) **Examiner Name** Rina I. Duda Attorney Docket Number CCP 2-046 Total Number of Pages in This Submission **ENCLOSURES** (Check all that apply) After Allowance communication Fee Transmittal Form Drawing(s) to Group Appeal Communication to Board Licensing-related Papers Fee Attached of Appeals and Interferences Appeal Communication to Group Reponse X Amendment/Reply Petition (Appeal Notice, Brief, Reply Brief) Petition to Convert to a Proprietary Information After Final Provisional Application Power of Attorney, Revocation Status Letter Affidavits/declaration(s) Change of Correspondence Address Other Enclosure(s) (please Terminal Disclaimer **Extension of Time Request** Identify below): Request for Refund **Express Abandonment Request** CD, Number of CD(s) Information Disclosure Statement Remarks Certified Copy of Priority Document(s) Response to Missing Parts/ Incomplete Application Response to Missing Parts under 37 CFR 1.52 or 1.53

|                       | CERTIFICATE OF TRANSMISSION/MAILING    |  |
|-----------------------|--|--|
| Date                  | August 20. 2004 V                      |  |
| Signature             | 17/hall                                |  |
| or<br>Individual name | Gerald L. Smith Mueller and Smith, PPA |  |

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

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| Typed or printed name | Jane Keeney | <del></del> |                 |
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| Signature             | Jane Leener | Date        | August 30, 2004 |

This collection of information is godired by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Appln. No. 10/706.412
Response dated August 30, 2004
Response Communication of August 27, 2004

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Christian C. Petersen

Serial No :10/706,412

Filed :November 12, 2003

For :Multiphase Motors With Single Point Sensing Based Commutation

TC/AU :2837

Examiner :Rina I. Duda
Attorney Docket No. : CCP 2-046

HONORABLE COMMISSIONER FOR PATENTS MAIL STOP AMENDMENT P.O. BOX 1450 ALEXANDRIA, VA 22313-1450

## **RESPONSE**

Sir:

In response to the Office communication mailed August 25, 2004 calling for a restriction under § 121 of the Patent Statute between a Group I and a Group II of the claims, applicant provisionally elects claim Grouping II incorporating claims 12-27, 45-66 and 109-118.

Applicant respectively traverses the requirement for restriction.

Section 121 of the Patent Statute authorizes a requirement for restriction only when two or more independent and distinct inventions are claimed in one application. While the invention defined by the claims of Group I and the invention defined by the claims of Group II may be distinct and separately patentable in different applications, it is clear that these inventions are dependent in that each is related to the other in operation or effect. The Statute requires both independence and distinctness, not either, and provides such requirement in definite terms. The construction adopted by the Manual Patent Examining Procedure assumes that the Statute authorizes restriction between inventions which are not independent and distinct but which are either independent or distinct. It is applicant's position that the plain meaning of the Statute defies such construction. For this reason, applicant requests that the restriction requirement be

Appln. No. 10/706.412 Response dated August 30, 2004 Reply to Office Communication of August 27, 2004

withdrawn and that all claims may be prosecuted as a single invention.

Respectfully submitted,

Date:

Gerald L. Smith Reg. No. 22,009

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## **CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited on August <u>30</u>, 2004 with the United States Postal Service as first class mail in an envelope addressed to:

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